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September 7, 2023

VIA ECF

Hon. Valerie Caproni
United States District Court
40 Foley Square, Room 240
New York, NY 10007

Re: Benthos v. Etra, 20-CV-3384

Dear Judge Caproni:

Benthos is writing to respectfully seek clarification of the Court's intended next steps with regard to the forensic examination of Mr. Etra's electronic devices.

Last week, Benthos provided Mr. Etra, Mr. Sklar and Mr. McGuinness the three business references from proposed forensic examiner Greg Kelley that the Court directed in its August 29th order (Dkt. 371). That order also directed that Mr. Etra provide to Mr. McGuinness, no later than next Friday, September 15, various account and password information. Although the order also provided that by October 2, "Benthos must file a status update regarding the forensic examination," we are not clear on how the examination can proceed in the absence of an order (i) directing Mr. McGuinness to turn over the account/password information to the forensic expert, and (ii) authorizing Mr. Kelley to proceed with the forensic examination pursuant to the Proposed Forensic Protocol filed as Dkt. 362-1 or such other Protocol as the Court may direct.

We apologize for burdening Your Honor and your clerks, but we deemed it advisable to seek and obtain clarification before, rather than after, the account/password information is (hopefully) provided on September 15, to avoid further delay in this process. Thank you for your consideration of this request.

Respectfully yours,

A handwritten signature in blue ink, appearing to read 'St. R. Popofsky', with a horizontal line underneath.

Steven R. Popofsky

cc: Daniel McGuinness (via ECF and e-mail)
Aaron Etra (per Dkt. 263 n.2)
Marc Sklar (via e-mail)
Alisa Benintendi

The Court will promptly enter a forensic protocol once Etra produces his passwords and a list of on-line accounts with usernames and passwords to Mr. McGuinness. Mr. McGuinness should file a letter with the Court once he receives this information from Mr. Etra, on or before **Friday, September 15, 2023**. The October 2, 2023, status update should update the Court regarding the examination's progress and Benthos's availability for a status conference to discuss the timeline for Mr. Etra to conduct his privilege reviews in waves.

The Clerk of Court is respectfully directed to mail a copy of this Order to Mr. Etra and to note the mailing on the docket.

SO ORDERED.


09/08/2023

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE